

**TESTIMONY BY
MARK DRESNER, ENGELHARD CORPORATION,
PRESENTED TO THE WESTERN HEMISPHERE SUBCOMMITTEE OF THE
HOUSE INTERNATIONAL RELATIONS COMMITTEE**

APRIL 13, 2005

Mr. Chairman, Mr. Menendez and Members of the Subcommittee, I appreciate the opportunity to once again appear before this panel to discuss my company's more-than-five-year struggle with the Government of Peru.

I am Mark Dresner, Vice President of Corporate Communications for Engelhard Corporation. Engelhard is a *FORTUNE 500* company headquartered in Iselin, New Jersey with facilities in 18 states and worldwide operations employing more than 6,600 people.

I am here today to renew my request that the United States Congress stand firm in denying the Government of Peru the benefits of a Free Trade Agreement – and consider withholding some of the more than \$600 million Peru annually receives from the U.S. Government -- until such time that Peru clears Engelhard's name and returns the nearly \$30 million it expropriated from our company and its shareholders, together with accrued interest in accordance with Peruvian law.

I am also here today to share with you developments in our case since the hearing last October and to put in perspective what those developments really mean in the bigger picture of securing a fair and full resolution of our matter.

First, let me briefly summarize our issue. The basics of the case are simple. Engelhard purchased real gold at fair market prices, paid all the VAT required under Peruvian law and exported the gold to its U.S. refinery, thereby becoming eligible for a VAT refund.

For more than five years, the Government of Peru has produced no evidence – either documentary or testimonial -- of any wrongdoing on the part of the company or its officials, nor has it ever even offered a motive or explanation of how the company may have profited from any alleged scheme.

On the other hand, all of Engelhard's transactions were found to be legal and appropriate by three independent audits, including one performed by Peruvian court-appointed auditors.

The Government of Peru's position has been to hold Engelhard accountable for the actions of others – time and again claiming that the exporter should be denied refunds if any VAT shortfalls were discovered or any irregularities occurred – regardless of who was truly responsible.

There is no evidence against the company or its employees, and SUNAT (the Peruvian Tax Agency) and other officials within the Ministry of Economics and Finance have committed criminal acts in order to keep the case hopelessly gridlocked.

I remind the Subcommittee that this is not simply Engelhard's view. This view is supported by:

- A judge's decision in bail hearings;
- The findings of a bi-partisan Commission of the Peruvian Congress;
- The findings of a Lima police investigation;
- The findings of a probe by Peru's Anti-Corruption Court; and
- A ruling by Peru's Constitutional Court.

The latest development in our case involves SUNAT's appeal of that Constitutional Court ruling. In April 2004, the Constitutional Court ruled that Engelhard's rights had, indeed, been violated. The ruling implicitly and repeatedly states that Engelhard cannot be held responsible for the actions of third parties in the absence of evidence.

That ruling further states that the documentary evidence filed by SUNAT does not demonstrate any irregularities in the purchase of gold by Engelhard.

The Court also ruled that SUNAT and the MEF violated due process rules by exercising Engelhard letters of guaranty totaling approximately \$20 million and by withholding additional refunds from the company amounting to an additional \$10 million.

According to Peruvian law, the deadline for a decision on SUNAT's appeal of that ruling was June 25, 2004. If we have learned anything in more than five years, it is that deadlines are irrelevant in the Peruvian judicial system.

The Superior Court finally rendered a decision late last month. Two of three judges voted in favor of Engelhard, but three votes are needed for a final determination. A fourth judge has been added to review the appeal and another round of oral arguments is scheduled for April 28th.

A critical point I want to make to you today is this: A ruling in favor of Engelhard on this appeal is an important step, but it would not resolve the case. It would remand the case back to the Tax Court for reconsideration. If the Tax Court followed the instructions of the Constitutional Court, it would appear that the Tax Court would have no alternative but to rule in Engelhard's favor.

The reason we are so concerned, however, is that we have been here before.

In April 2002, Peru was anxious to secure its recertification for benefits under the ATPDEA. The Engelhard case was one of several disputes involving U.S. companies that threatened their recertification.

Against that backdrop, Peru's Tax Court ruled in favor of Engelhard and instructed SUNAT to once again review the company's VAT refund requests. The Tax Court further instructed SUNAT to do so with two important provisos:

1. Do not use Supreme Decree 14 -- Supreme Decree 14, which was ruled unconstitutional, was the vehicle SUNAT used initially to rule against Engelhard and to take possession of the company's funds; and
2. Rely only on evidence directly related to Engelhard -- not the actions of third parties.

In lobbying Washington for ATPDEA recertification, Peruvian officials pointed to the favorable Tax Court ruling as an example of the fair treatment being extended to Engelhard. In September 2002, Peru promised, in writing, to "promote prompt and effective due process and transparency under the law in connection with processes that companies such as Engelhard ... may seek to pursue in Peru."

After that promise was made and Peru received the recertification it sought from the U.S. Government, SUNAT issued virtually the same resolutions against Engelhard. The Tax Court then inexplicably reversed itself -- ruling against Engelhard in the absence of any direct evidence against the company.

Peru made a promise to get what it wanted from the U.S. Government. It not only failed to live up to that promise, it then committed criminal acts against the company in denying Engelhard due process.

In recent weeks, Peruvian officials have held meetings in Washington in which they touted the recent 2-1 Superior Court ruling as an indication that the ultimate determination is likely to be favorable to Engelhard.

Such a favorable ruling provides no guarantee that the Tax Court will rule fairly and return the money rightfully owed the company, nor does it suggest that the unwarranted criminal charges against our employees will be dropped.

By its actions, the Government of Peru has demonstrated that it will do only what it is forced to do in order to get what it seeks from the U.S. Government. Now, it seeks the benefits of a Free Trade Agreement and ongoing U.S. aid in spite of the fact that Peru has failed to live up to the promise it made to secure ATPDEA benefits three years ago.

Given the history of our case – the countless delays, manipulations and even criminal acts by which we've been victimized – we urge the United States Congress to withhold the benefits of a Free Trade Agreement until Peru fully and fairly resolves the Engelhard case. And the case will only be fully and fairly resolved when:

1. The company's name is cleared;
2. The monies rightfully owed are deposited in an Engelhard bank account outside of Peru; and
3. Unwarranted criminal charges against our employees are dropped.

In their recent meetings in Washington, we understand that Peruvian officials also have pointed out that the Engelhard case is small in comparison to the overall investment of American companies in Peru. As one of several companies engaged in long and frustrating disputes with the Government of Peru, we find such a statement both frightening and deplorable. Are they suggesting that as long as overall American investment remains high, the U.S. Government should overlook the theft of \$30 million and the ongoing denial of due process?

Engelhard is not asking for special treatment – only fairness. We urge Members of Congress to insist that Peru deliver that fairness in full before granting them what they now seek from you.

To grant Peru additional benefits – knowing how they continue to mistreat U.S. companies and mislead U.S. Government officials – would be to reward and enable the continuation of corrupt practices.

Thank you.

#